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Filing date: **12/21/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062658
Party	Defendant Neit Enterprises Inc.
Correspondence Address	NEIT ENTERPRISES INC 102-2655 MARY HILL ROAD PORT COQUITLAM, V3C6R9 CANADA
Submission	Answer
Filer's Name	Paul L. Hickman
Filer's e-mail	phickman@tipsgroup.com
Signature	/paul hickman/
Date	12/21/2015
Attachments	NEITL1_Answer.pdf(3227656 bytes )

**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

JASON P. PETCH

vs.

NEIT ENTERPRISES Inc.

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CANCELLATION NO. 92062658

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**Registrant's Answer to Petition for Cancellation**

In response to the Petition for Cancellation ("Petition") filed by Jason P. Petch ("Petitioner") on November 17, 2015, trademark registrant Neit Enterprises Inc. ("Registrant") answers as follows:

1. Registrant admits in part and denies in part the allegations of ¶1. Registrant admits that U.S. Trademark Application No. 86/716,325 ("Petitioner's Pending Application") lists the goods and services of "Global positioning systems (GPS); computer hardware and software systems used for tracking of people and objects; portable electronic markers for location of persons by tracking systems; electronic modules for incorporation into garments, clothing, accessories and headgear" in IC 009. Registrant is without sufficient

information or belief to admit or deny the other allegations of ¶1 and thereby denies the allegations of ¶1 other than as specifically admitted above.

2. Registrant is without sufficient information or belief to admit or deny the allegations of ¶2 and thereby denies the allegations of ¶2.

3. Registrant is without sufficient information or belief to admit or deny the allegations of ¶3 and thereby denies the allegations of ¶3.

4. Registrant is without sufficient information or belief to admit or deny the allegations of ¶4 and thereby denies the allegations of ¶4.

5. Registrant is without sufficient information or belief to admit or deny the allegations of ¶5 and thereby denies the allegations of ¶5.

6. Registrant is without sufficient information or belief to admit or deny the allegations of ¶6 and thereby denies the allegations of ¶6.

7. Registrant is without sufficient information or belief to admit or deny the allegations of ¶7 and thereby denies the allegations of ¶7.

8. Registrant denies the allegations of ¶8.

9. Registrant denies the allegations of ¶9.

10. Registrant incorporates herein by reference its answers of paragraphs 1-9 as if fully set forth herein.

11. Registrant denies the allegations of ¶11.

12. Registrant admits there is a Section 2(d) refusal of Petitioner's Pending Application because of a likelihood of confusion with U.S. Trademark No. 4,751,342 ("Registrant's Mark"). Registrant is without sufficient information or belief to admit or deny

the allegations of ¶12 and thereby denies the allegations of ¶12 other than as specifically admitted above.

13. Registrant denies the allegations of ¶13.

14. Registrant incorporates herein by reference its answers of paragraphs 1-13 as if fully set forth herein.

15. Registrant denies the allegations of ¶15.

16. Registrant is without sufficient information or belief to admit or deny the allegations of ¶16 and thereby denies the allegations of ¶16.

17. Registrant is without sufficient information or belief to admit or deny the allegations of ¶17 and thereby denies the allegations of ¶17.

18. Registrant denies the allegations of ¶18.

19. Registrant denies the allegations of ¶19.

20. Registrant denies the allegations of ¶20.

21. Registrant denies the allegations of ¶21.

22. Registrant denies the allegations of ¶22.

23. Registrant denies the allegations of ¶23.

24. Registrant denies the allegations of ¶24.

25. Registrant denies the allegations of ¶25.

26. Registrant denies the allegations of ¶26.

### *Affirmative Defenses*

In further answer to the Petition, Registrant asserts that:

27. Registrant purchased the domain name *skynannygps.com* on February 26, 2010. A copy of a *Go Daddy* order confirmation for the purchase of the domain name is attached hereto as Exhibit A.

28. Registrant's mascot was created between March 8, 2010 and March 13, 2010, as confirmed by Registrant on March 26, 2010. A copy of a message stream with logo designer Sayan B. of *Elance* is attached hereto as Exhibit B.

29. Petitioner filed an application for Australian Trademark No. 1592594 on November 11, 2013, but failed to file a Convention application in the United States by May 11, 2014, thereby waiving any right to claim the priority of the Australian application in the United States. A copy of the Australian *Trade Mark Details* is attached hereto as Exhibit C.

30. Petitioner did not make any actual use of its mark until at least October 30, 2014. An excerpt from Petitioner's Facebook page dated October 29, 2014 with the post "One more sleep until our Skynanny product launch" is attached hereto as Exhibit D.

31. Petitioner accepted Registrant's explanation that the inadvertent display of Petitioner's video on Registrant's website was due to an inherent feature of YouTube and not due to Registrant's intent. A copy of an email string, dated December 16-20, 2014, between Natasha Chadwick on behalf of Petitioner and SkyNanny GPS is attached hereto as Exhibit E. This was the first contact between Petitioner and Registrant.

### *Counter-Claim*

In further answer to the Notice, Registrant counter-claims that:

32. Petitioner is perpetuating a fraud upon the USPTO. Petitioner filed an Intent-to-Use U.S. Trademark Application No. 86/716,325 (“the ‘325 Application”) on August 6, 2015 for the mark “SKY NANNY” (two words). On November 17, 2015, and concurrently with the filing of the present Petition for Cancellation, Petitioner filed an amendment to change the mark to “SKYNANNY” (one word) and to allege use in commerce to “at least as early as 04/22/2014.”

33. The specimens submitted by the Petitioner to support the allegation of use do not support the claimed 04/22/2014 date for use in commerce, and are contradicted by Petitioner’s own statements that its product launch was not until at least 10/30/2014.

34. The belated amendment of the mark and the fabrication of the date of alleged use in commerce is clear evidence of fraudulent and bad faith attempts by Petitioner to purloin Registrant’s mark and constitutes fraud upon the USPTO.

***Relief Requested***

1. Registrant asks that the Petition to be dismissed.
2. For the Counter-Claim, Registrant asks that the Board sanction Petitioner for fraud on the USPTO with a final rejection of Petitioner’s Pending Application.

No fees are believed to be due with this filing. If any fees are required for the timely submission of this or subsequent filings, they may be charged to U.S.P.T.O. Deposit Account 50-3539.

Respectfully Submitted



Paul L. Hickman  
Attorney for Registrant

**CERTIFICATE OF SERVICE**

*I hereby certify that a true and complete copy of the foregoing Registrant's Answer to Petition for Cancellation has been served on Andrew D. Skale by mailing said copy on December 21, 2015, via First Class Mail, postage prepaid to: Andrew D. Skale, Mintz Levin, 3580 Carmel Mtn. Road, Ste. 300, San Diego, CA 92130.*



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Paul L. Hickman



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Date

PETITION FOR CANCELLATION

Cancellation No. 92062658

Registration No. 4,751,342


Exhibit of Neit Enterprises, Inc.

## EXHIBIT A




----- Forwarded Message -----


**ORDER CONFIRMATION from GODADDY.COM**


 **GoDaddy<sup>®</sup>.COM**  
The web is your Domain!<sup>®</sup>

**Thanks for your order!**

**Danica Patrick,  
Racing Star  
& Go Daddy Girl<sup>®</sup>**



 **Go Daddy<sup>®</sup>.COM**



Subtotal:	\$10.87
Shipping & Handling:	\$0.00
Tax:	\$0.00
Total:	\$10.87

**Domain  
Names** only **\$1.99\***

**FREE EXTRAS**  
with every domain

- Hosting
- Web Site Builder
- Quick Blogcast™
- Personalized Email
- AND MORE!

**Shop Now!**

\*with any new, non-domain purchase.

**EARN CASH**

**JOIN THE GO DADDY  
AFFILIATE PROGRAM**

**SOCIAL**VISIBILITY  
Market your business on social networks with just one click.

## Important Information concerning your purchase:

Domain Registration	Product Info	Legal Agreement
Quick Blogcast	Product Info	Legal Agreement
Free Hosting w/Web Site Builder	Product Info	
Starter Web Page or For Sale Page	Product Info	
Free Personal Email	Product Info	Legal Agreement

To set up or manage your free or purchased products:

1. Go to the GoDaddy.com home page and log in with your username or customer number and password.
2. From the My Products list in your account manager, you can manage, renew, and upgrade your products and services.

To retrieve your customer number or password hint or to reset your password, click the "Forgot Your Password?" hyperlink in the login area on the home page.

Questions? Get help at <http://www.godaddy.com/gethelp> or give us a call 24/7 at (480) 505-8877.

Sincerely,  
GoDaddy.com, Inc.



### P.S. Think you can create a better Go Daddy commercial?

Then show us what you've got. Your commercial could end up on our Web site and you could win incredible prizes! [Learn more.](#)

**Deluxe Hosting** - Just **\$6.64/mo** for 12 months! **Save 5%**! Host with 50,000MB space, 500GB transfer, **FREE** software & more!

**WebSite Tonight® Deluxe** - Just **\$8.09/mo** for 12 months! Build your site online in minutes! **Save 10%**!

#### How Do I...?

- ▲ Create my [email account](#)?
- ▲ Set up my [hosting account](#)?
- ▲ Set up my [SmartSpace®](#) site?
- ▲ Getting started with [WebSite Tonight®](#)
- ▲ Redeem my [MySpace® myAds®](#), [Facebook®](#) or [Google® AdWords®](#) credit?
- ▲ Get answers to [product setup questions?](#)
- ▲ Register more domain names?
- ▲ Make a domain name [private](#)?
- ▲ Manage a registered domain name?
- ▲ [Forward](#) a domain name?
- ▲ [Renew](#) domain names?
- ▲ Transfer domain names to Go Daddy?
- ▲ Set up my [dedicated or virtual dedicated server](#)?
- ▲ [Drive web traffic](#) using Search Engine Visibility?
- ▲ Find out about [what's new](#) with products and services?
- ▲ View [Legal Agreements?](#)

Prices are current as of 2/26/2010, and may be changed without notice.

\*Plus CANN fee of 18 cents per domain name year. Visit our [WebSite](#) for details.  
\*\*Free Hosting, WebSite Tonight, Personalized Email, Photo Album and Quick Blogcast valued at over \$100/yr if purchased separately. Free WebSite Tonight, Photo Album and Quick Blogcast services are ad-supported. All comparison prices are accurate as of 2/26/2010 and are subject to change without notice.

Third party marks and logos are registered trademarks of their respective owners. All rights reserved.

Copyright © 2010 GoDaddy.com, Inc. All rights reserved.

PETITION FOR CANCELLATION  
Cancellation No. 92062658  
Registration No. 4,751,342  
Exhibit of Neit Enterprises, Inc.

## EXHIBIT B

Company Logo

Workroom

Messages

Payments

Files

Work View™

Status Reports

Terms & Milestones

Proposals

Alerts

Team Members

More

Applications



View All

Messages



Add Attachment

Post Message   Invite People

Sender	Message   Attachments	Date/Time
Tien S.	Status Report for week of Mar 15, 2010 Complete - Confirmed by the client	Mar 26, 2010 12:52 am
Abhis... J.	Status Report for week of 15 MAR 2010 Complete - Pending Confirmation Completed	Mar 19, 2010 1:54 am
Sayan B.	Hello,  All design files we have is transferred to you.  Project is complete.  Regards Sayan	Mar 14, 2010 8:30 pm
Tien S.	Hi Sayan,  Do I have all the files at this point? The project is complete?  Regards, Tien	Mar 14, 2010 2:28 pm
Sayan B.	Plz find the final files of the icon attached.  Regards Sayan <a href="#">SkyNanny_GPS__files_13032010.zip</a>	Mar 13, 2010 1:23 am
Tien S.	Looks good. Are there any other files I need to get from you at this point?	Mar 12, 2010 3:23 pm
Sayan B.	Plz check the icon concept revised.  Regards Sayan <a href="#">SkyNanny_GPS.zip</a>	Mar 12, 2010 7:55 am
Tien S.	Hello Sayan,  For the icon, I think it would be better to leave out the "satellite" and focus in on the "skynanny" character. The character looks too small in the current icon.  Thanks, Tien	Mar 11, 2010 1:21 pm

Elance (ET)   9:21 pm

People

Sayan B.  
SayanBiswas  
last login 1303 days ago

Tien S.  
tshiah  
last login 2 minutes ago

Recent Files

[Filter Messages](#)  
[SkyNanny\\_GPS\\_\\_files\\_13032...](#)  
[SkyNanny\\_GPS.zip](#)  
[SkyNanny\\_GPS.zip](#)  
[SkyNanny\\_GPS\\_Final\\_Files\\_...](#)  
[SkyNanny\\_GPS\\_09032010.jpg](#)

[View All](#) | [Upload New File](#)

Workroom Email Address [?]

E19322504-WR@workroom.elance

Notification Settings [?] +

Related Proposals +

Sender	Message   Attachments	Date/Time
	<a href="#">Filter Messages</a>	
Sayan B.	Plz check the icons.  Regards Sayan <a href="#">SkyNanny-GPS.zip</a>	Mar 11, 2010 8:09 am
Sayan B.	Final files for the logo attached.  Regards Sayan <a href="#">SkyNanny_GPS_Final_Files_10032010.zip</a>	Mar 11, 2010 2:36 am
Sayan B.	We are making the icon and will deliver shortly and also the files for the logo	Mar 11, 2010 2:23 am
Tien S.	Hello	Mar 11, 2010 2:23 am
Sayan B.	Yes tell me	Mar 11, 2010 2:22 am
Tien S.	Ok. We'll go with this one. For the iPhone icon, we'll use this character - the texts appears below the icon as usual for Apps.... Please provide sample for icon...  Thanks.	Mar 09, 2010 1:02 pm
Sayan B.	Plz check the updates.  Regards Sayan <a href="#">SkyNanny_GPS_09032010.jpg</a>	Mar 09, 2010 7:37 am





Tien S.	Hi,  Could you do Logo #1 with "N" in nanny capitalized?  Thanks, Tien	Mar 08, 2010 5:20 pm
Sayan B.	Plz check the updates.  Regards Sayan <a href="#">SkyNanny_GPS_08032010.jpg</a>	Mar 08, 2010 5:14 am



Tien S.	Hi Sayan,  I will go with design #1. Could you try capitalizing the "S" and "N" for SkyNanny GPS? Perhaps also try some different fonts for the name...  Thanks, Tien	Mar 07, 2010 1:44 pm
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Sender	Message   Attachments	Date/Time
	<a href="#">Filter Messages</a>	
Sayan B.	<p>Plz check the logo concept revised.</p> <p>Regards Sayan</p> <p><a href="#">SkyNanny_GPS_06032010.jpg</a></p> 	Mar 06, 2010 11:29 am
Tien S.	<p>Hello,</p> <p>This is a good start. Of the 6, I'm leaning toward #1. Logos #2, 4, and 6 all have "babies", which is not really applicable for the type of product we are selling. The GPS tracker devices are carried by kids that walk around on their own...</p> <p>Perhaps we can explore concepts with a satellite as well as a nanny character...</p> <p>Thanks, Tien</p>	Mar 05, 2010 2:12 pm
Sayan B.	<p>Hello,</p> <p>Plz check the logo concepts attached. Awaiting your thoughts on the same.</p> <p>Regards Sayan</p> <p><a href="#">SkyNanny_GPS_05032010.jpg</a></p> 	Mar 05, 2010 1:31 pm
Sayan B.	<p>Thanks for the award. Plz fill up the form and send back to us.</p> <p>Regards Sayan</p> <p><a href="#">Logo_Detail_Forms.xls</a></p>	Mar 04, 2010 8:16 pm

All times are in EST (UTC-05:00)

PETITION FOR CANCELLATION  
Cancellation No. 92062658  
Registration No. 4,751,342  
Exhibit of Neit Enterprises, Inc.

## EXHIBIT C

## Trade Mark Details

### Trade Mark : 1592594

**Word:** SKY NANNY  
**Image:**  
**Lodgement Date:** 21-NOV-2013  
**Registered From:** 21-NOV-2013  
**Date of Acceptance:** 20-JAN-2014  
**Acceptance Advertised:** 17-APR-2014  
**Registration Advertised:** 10-JUL-2014  
**Entered on Register:** 07-JUL-2014  
**Renewal Due:** 21-NOV-2023  
**Class/es:** 9  
**Status:** Registered/Protected  
**Kind:** n/a  
**Type of Mark:** Word

**Owner/s:** **Jason Phillip Petch**  
195 Roberts Rd  
MORNINGTON VIC 3931  
AUSTRALIA

**Address for Service: Marquette Intellectual Property**  
PO BOX 346  
FITZROY VIC 3065  
AUSTRALIA

### Goods & Services

**Class 9:** Portable electronic markers for location of persons by tracking systems; electronic modules for incorporation into garments or protective clothing, caps and hats

**Indexing Details - Word Constituents**  
NANNY SKY

### Indexing Details - Image Constituents



PETITION FOR CANCELLATION  
Cancellation No. 92062658  
Registration No. 4,751,342  
Exhibit of Neit Enterprises, Inc.

## EXHIBIT D



**Sky Nanny**

October 29, 2014 · 🌐



One more sleep until our Skynanny product launch!



Like



Comment



Share

23 people like this.

Top Comments ▾



Write a comment...



**Sky Nanny** Thank you.

Like · Reply · October 29, 2014 at 4:50am



**Jodie Gowans** Yay good luck beautiful people xx

Like · Reply · 👍 1 · October 29, 2014 at 3:54am



**Lucy Caserta** All the best for the day, hope it goes really really well for you all!

Like · Reply · 👍 1 · October 29, 2014 at 3:32am



**Stacey Kelly** Good luck. Go skynanny team. Xo

Like · Reply · 👍 1 · October 29, 2014 at 3:20am

Write a comment...

PETITION FOR CANCELLATION  
Cancellation No. 92062658  
Registration No. 4,751,342  
Exhibit of Neit Enterprises, Inc.

## EXHIBIT E

[Print](#) | [Close window](#)

From : Natasha Chadwick <nat@natwick.co>  
To : "support" <support@skynannygps.com>  
Subject : Re: Derryn Hinch & Skynanny - Legal Action  
Date : Fri, 19 Dec 2014 13:48:29 -0800

Hi SkyNanny GPS,

Yes, I accept that now. I had no idea YouTube did that. They must get inundated with complaints like this all the time. It's bad for any business to have their competitors appearing on their website.

Appreciate your help and look forward to checking in Monday afternoon.

Regards,

Natasha Chadwick

**From:** support  
**Sent:** Saturday, December 20, 2014 1:25 AM  
**To:** Natasha Chadwick ; hinch@hinch.net  
**Subject:** Re: Re: Derryn Hinch & Skynanny - Legal Action

Ms. Chadwick,

Thank you for the link. We will get our web editor to look into it when he returns on Monday. Hopefully you understand now that we did not put your video on our website.

Regards,  
SkyNanny GPS

----- On Thu, 18 Dec 2014 17:23:46 -0800 **Natasha Chadwick** <nat@natwick.co> wrote -----  
SkyNanny GPS,

I have found a solution to the problem but unfortunately, it has to be done at your end, otherwise I'd do it and save you the time.

This is a video link which explains step by step how to achieve this.

Thank you for your help, we'll get there in the end!

<https://www.youtube.com/watch?v=Qf5vZBFJYI8>

Natasha Chadwick

**From:** support  
**Sent:** Friday, December 19, 2014 9:55 AM  
**To:** Natasha Chadwick ; hinch@hinch.net  
**Subject:** Re: Re: Derryn Hinch & Skynanny - Legal Action

Ms. Chadwick,

You've made it very clear you don't want your videos to appear, and we've made it very clear we don't want your videos to appear. But we believe this is not our choice when we use the YouTube link service. We embed a YouTube link to our own video on our website. When the video play is completed, YouTube suggests other videos - which is where the problem arises.

Note that we are NOT playing any of your videos "automatically." We play our OWN videos automatically. A "suggested" link appears AFTER our video has completed playing. This is YouTube's advertising of other videos. If you say the YouTube suggestions can be changed via a setting, please let us know. We are not aware that this can be done.

If we are able to, we would like nothing less than to block Youtube's suggestion of your video from appearing from our website. It's not good for us.

Regards,  
SkyNanny GPS

----- On Thu, 18 Dec 2014 14:24:58 -0800 **Natasha Chadwick** <nat@natwick.co> wrote -----  
SkynannyGPS,

We do know how YouTube works, we have our own account and we do not play other people's videos automatically. You can adjust this in your settings to avoid this from happening.

Your claim that YouTube is responsible for the Skynanny.net video appearing on your website has been filed with YouTube. We believe it is a breach of the Derryn Hinch and HumanHeadline Trademark and have filed a complaint with YouTube.

You do not have permission for any video containing Hinch to appear on your website. If you truly believe that you did not place it there then we advise you to also contact YouTube to have them remove the video. If you truly feel as strongly as your previous emails indicate about not wanting to advertise the skynanny.net products on your website then it must be a high priority of your also, to get to the bottom of why it does appear on your website and we would expect you also want it to be removed.

We await your response and hope to achieve a satisfactory outcome for us both.

Natasha Chadwick

**From:** support  
**Sent:** Thursday, December 18, 2014 8:00 PM  
**To:** Natasha Chadwick ; Derryn Hinch  
**Subject:** Re: Derryn Hinch & Skynanny - Legal Action

Hello,

Our website plays our own video by linking to our video on YouTube. After the video has played, YouTube unfortunately displays other videos that it recommends to the viewer. We have no control over this. If you know about YouTube, watch a video - after it has finished playing, it will display other videos as suggestions. Again, this is not under our control.

We have no interest in displaying other products on our website and have NOT linked to your video.

Regards,  
SkyNanny GPS

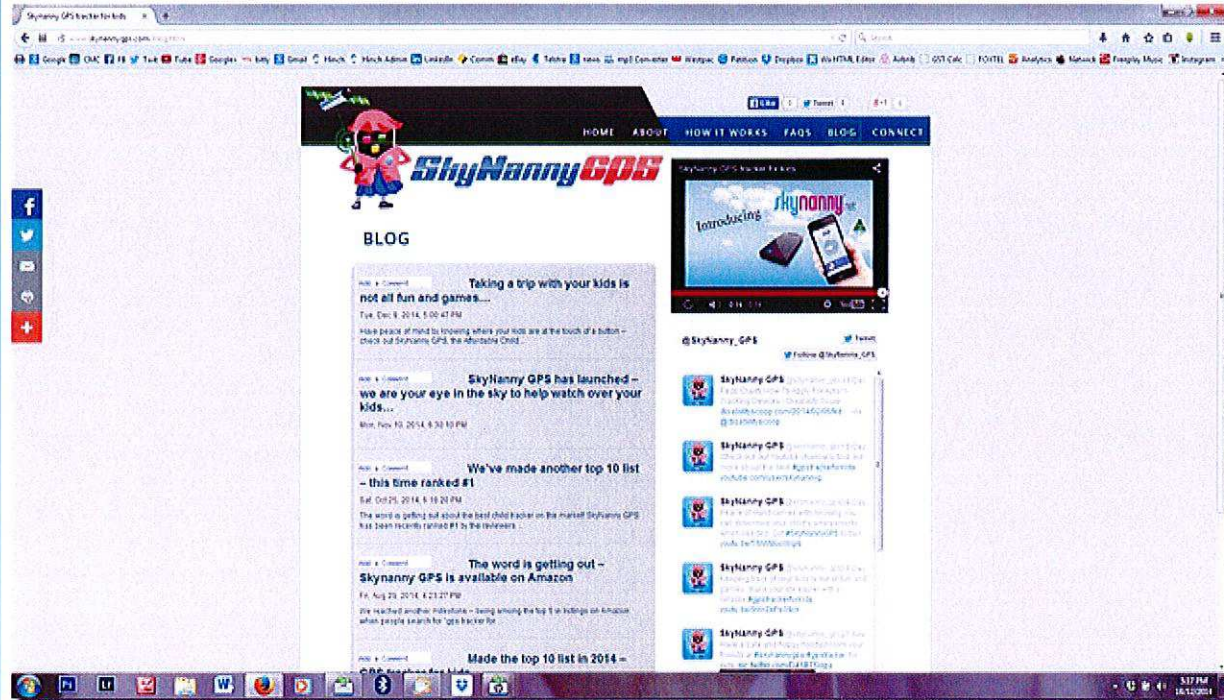


----- On Wed, 17 Dec 2014 22:24:05 -0800 **Natasha Chadwick** <nat@natwick.co> wrote -----

Skynanny GPS,

I am Derryn Hinch's partner and social media manager. He forwarded your response to me to send you evidence of the Skynanny.net advertisement which you currently feature on the blog page of your website. To plead ignorant in this case will not help you. The video plays on your blog page immediately following the 14 second SkynannyGPS video. Here is a screen shot of it as proof. As per Derryn Hinch's initial email to you and polite request, please remove this video from your website and do so within the next 24 hours otherwise he will be proceeding with legal action. We will be checking at 5:30pm tomorrow 19 December, 2014.

Regards, Natasha Chadwick (on behalf of Derryn Hinch)



**From:** support [mailto:support@skynannygps.com]  
**Sent:** Thursday, 18 December 2014 12:04 AM  
**To:** Derryn Hinch  
**Subject:** Re: Re: Contact Us: Copyright Breach - Legal Action

Hello,

We have taken a look at your advertisement from your website. It is definitely something we would NOT want to associate our brand with.

It is baffling that you believe we would want to advertise someone else's product on our website. Please send link to what you are referring to.

Regards,  
Skynanny GPS

----- On Wed, 17 Dec 2014 01:15:21 -0800 **support** <support@skynannygps.com> wrote -----

Hello,

Please send us a link to what you are referring to. We have not used any video of yours, nor do we have any interest in associating ourselves with your product.

Your allegations do not even make sense to us - why would we want to associate our product with something that is different?

Regards,  
SkyNanny GPS

----- On Tue, 16 Dec 2014 14:24:09 -0800 **Derryn Hinch** <[hinch@hinch.net](mailto:hinch@hinch.net)> wrote  
-----

Dear Skynanny GPS.

It has come to my attention that you have taken a Skynanny.net advertisement (video) which I feature in and have displayed it on your website. You do not have my permission to use my name, image or voice. I do not endorse Skynanny GPS. Kindly, remove the video immediately. If it is not take it down within 24hrs I will be initiating legal action, independent of anything Skynanny.net chooses to do over this copyright breach.

Derryn Hinch

Sent from IP Address: 120.150.115.174

This message was submitted from your website contact form:

<http://www.skynannygps.com/connect.html>

Natasha Chadwick  
P| +61 (0) 499 090 777  
E| [nat@natwick.co](mailto:nat@natwick.co)  
W| [natwick.co](http://natwick.co)